

## ARTICLE IV. WATER AND SEWER SYSTEMS\*

### DIVISION 1. GENERAL PROVISIONS

#### Sec. 70-187. Purpose and policy.

This article sets forth uniform requirements for direct and indirect contributors into the wastewater collection and treatment system for the City of Durham, hereafter referred to as the city, and enables the city to comply with all applicable state and federal laws, including the Clean Water Act (33 United States Code § 1251 et seq.) and the General Pretreatment Regulations (40 CFR, Part 403).

The objectives of this article are:

- (1) To prevent the introduction of pollutants and wastewater discharges into the municipal wastewater system which will interfere with the operation of the system or contaminate the resulting sludge;
- (2) To prevent the introduction of pollutants and wastewater discharges into the municipal wastewater system which will pass through the system, inadequately treated, into any waters of the state or otherwise be incompatible with the system;
- (3) To promote reuse and recycling of industrial wastewater and sludges from the municipal system;
- (4) To protect both municipal personnel who may be affected by sewage, sludge, and effluent in the course of their employment as well as protecting the general public;
- (5) To provide for equitable distribution of the cost of operation, maintenance and improvement of the municipal wastewater system; and
- (6) To ensure that the municipality complies with its NPDES or non-discharge permit conditions, sludge use and disposal requirements and any other federal or state laws to which the municipal wastewater system is subject.

This article provides for the regulation of direct and indirect contributors to the municipal wastewater system, through the issuance of permits to certain non-domestic users and through enforcement of general requirements for the other users, authorizes monitoring and enforcement activities, requires user reporting and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

This article shall apply to all users of the municipal wastewater system, as authorized by G.S. 160A-312 and/or 153A-275]. The City shall designate an administrator of the Publicly Owned Treatment Works or POTW and pretreatment program hereafter referred to as the Director. Except as otherwise provided herein, the Director shall administer, implement, and enforce the provisions of this article. Any powers granted to or imposed upon the Director may be delegated by the Director to other City personnel.

By discharging wastewater into the City of Durham collection system tributary to the Durham County treatment facility, industrial users located within the City of Durham limits agree to comply with the terms and conditions established in this Ordinance, as well as any permits, enforcement actions, or orders issued hereunder. Industrial users within this basin are subject to this Ordinance as well as subject to the Durham County Sewer Use Ordinance.

(Ord. No. 13523, 12-17-2007)

#### Sec. 70-188. Definitions and abbreviations.

(a) Unless the context specifically indicates otherwise, the following terms and phrases whether capitalized or not capitalized, as used in this article, shall have the following meanings:

*Act or the Act* means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. §1251, et seq.

*Approval authority* means the director of the division of water quality of the state department of environment and natural resources or his designee.

*Authorized representative of the industrial user.*

- (1) If the industrial user is a corporation, authorized representative shall mean:
  - a. The president, secretary, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or
  - b. The manager of one or more manufacturing, production, or operation facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
- (2) If the industrial user is a partnership or sole proprietorship, an authorized representative shall mean a general partner or the proprietor, respectively.
- (3) If the industrial user is a federal, state or local government facility, an authorized representative shall mean a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.
- (4) The individuals described in subsections (1)–(3) may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the City.
- (5) If the designation of an authorized representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of this section must be submitted to the Director prior to or together with any reports to be signed by an authorized representative.

*Biochemical Oxygen Demand (BOD)* means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five days at 20° centigrade, usually expressed as a concentration (e.g. mg/l).

*Building Sewer* means a sewer conveying wastewater from the premises of a user to the POTW.

*Bypass* means the intentional diversion of waste streams from any portion of a user's treatment facility.

*Categorical Standards* means the national categorical pretreatment standards or pretreatment standard.

Control Authority refers to the POTW organization if the POTW organization's Pretreatment Program approval has not been withdrawn.

*Director* means the director of water management for the City who is designated by the City to supervise the operation of the publicly owned treatment works and who is charged with certain duties and responsibilities by this article for the pretreatment program and enforcement of this article. The Director may further delegate in writing his/her authority to other city employees.

*Environmental Protection Agency* or *EPA* means the U.S. Environmental Protection Agency, or where appropriate the term may also be used as a designation for the administrator or other duly authorized official of said agency.

*Grab sample* means a sample which is taken from a waste stream on a one-time basis without regard to the flow in the waste stream and over a period of time not to exceed 15 minutes.

*Holding tank waste* means any waste from holding tanks, including but not limited to such holding tanks as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum-pump tank trucks.

*Indirect discharge* or *discharge* means the discharge or the introduction from any nondomestic source regulated under section 307(b), (c), or (d) of the Act, (33 U.S.C. 1317), into the POTW (including holding tank waste discharged into the system).

*Industrial user* means any person which is a source of indirect discharge.

*Interference* means the inhibition, or disruption of the POTW collection system, treatment processes, operations, or its sludge process, use, or disposal, which causes or contributes to a violation of any requirement of the Control Authority's NPDES or non-discharge permit or prevents sewage sludge use or disposal in compliance with specified applicable state and federal statutes, regulations, or permits. The term includes prevention of sewage sludge use or disposal by the POTW in accordance with section 405 of the Act, (33 U.S.C. 1345) or any criteria, guidelines, or regulations developed pursuant to the Solid Waste Disposal Act (SWDA)(42 U.S.C. § 6901, et seq.), the Clean Air Act, the Toxic Substances Control Act, the Marine Protection Research and Sanctuary Act (MPRSA) or more stringent state criteria (including those contained in any state sludge management plan prepared pursuant to Title IV of SWDA) applicable to the method of disposal or use employed by the POTW.

*Medical waste* means isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

*North American Industry Classification Standard (NAICS)* means a classification pursuant to the NAICS manual issued by the executive office of the President, Office of Management and Budget, 1997.

*National categorical pretreatment standard* or *categorical standard* means any regulation containing pollutant discharge limits promulgated by EPA in accordance with sections 307(b) and (c) of the Act (33 U.S.C. § 1317) which applies to a specific category of industrial users, and which appears in 40 CFR Chapter 1, Subchapter N, Parts 405--471.

*National prohibitive discharge standard* or *prohibitive discharge standard* means absolute prohibitions against the discharge of certain substances; these prohibitions appear in section 70-216 and are developed under the authority of 307(b) of the Act and 40 CFR, section 403.5.

*New source* means:

- (1) Any building, structure, facility, or installation from which there may be a discharge of pollutants, the construction of which commenced after the publication of proposed categorical pretreatment standards under section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with section 307(c), provided that:
  - a. The building, structure, facility, or installation is constructed at a site at which no other source is located;
  - b. The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
  - c. The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.
- (2) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of subsections (1)b. or c. but otherwise alters, replaces, or adds to existing process or production equipment.
- (3) For purposes of this definition, construction of a new source has commenced if the owner or operator has:
  - a. Begun, or caused to begin, as part of a continuous on-site construction program:
    1. Any placement, assembly, or installation of facilities or equipment; or
    2. Significant site preparation work including clearing, excavation, or removal of existing buildings, structures or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
  - b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this definition.

*Noncontact cooling water* means water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

*National pollution discharge elimination system permit* or *NPDES permit* means a permit issued pursuant to section 402 of the Act (33 U.S.C. §1342), or pursuant to G.S. 143-215.1 by the state under delegation from EPA.

*Non-discharge permit* means a disposal system permit issued by the state pursuant to G.S. 143-215.1 (d) for a waste which is not discharged directly to surface waters of the State or for a wastewater treatment works which does not discharge directly to surface waters of the State.

*Pass through* means a discharge which exits the POTW into waters of the state in quantities or concentrations which, alone or with discharges from other sources, causes a violation, including an increase in the magnitude or duration of a violation, of the **Control Authority's** POTW's NPDES, **Collection System or non-discharge permit**, or a downstream water quality standard **even if not included**

in the permit.

*Person* means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns. This definition includes all federal, state, and local government entities.

*pH* means a measure of the acidity or alkalinity of a substance, expressed as standard units, and calculated as the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution.

*Pollutant* means any "waste" as defined in G.S. 143-213(18) and dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, **metals**, BOD, COD, toxicity, **and** odor).

*POTW treatment plant* means that portion of the POTW designed to provide treatment to wastewater.

***Pretreatment*** means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollution into a POTW collection system and/or treatment plant. The reduction or alteration can be obtained by physical, chemical or biological processes, or process changes or other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard as defined in 40 CFR 403.6(d).

*Pretreatment program* means the program for the control of pollutants introduced into the POTW from non-domestic sources which was developed by the city in compliance with 40 CFR 403.8 and approved by the approval authority as authorized by G.S. 143-215.3(a)(14) in accordance with 40 CFR 403.11.

*Pretreatment requirements* means any substantive or procedural requirement related to pretreatment, other than a pretreatment standard.

***Pretreatment standards*** means any prohibited discharge standard, categorical standard, or local limits which applies to an industrial user.

*Publicly Owned Treatment Works (POTW) or municipal wastewater system* means a treatment works as defined by section 212 of the Act, (33 U.S.C. § 1292) which is owned in this instance by the city. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to the POTW treatment plant. For the purposes of this article, "POTW" shall also include any sewers that convey wastewaters to the POTW from persons outside the city who are, by contract or agreement with the city, or in any other way, users of the POTW of the city.

*Severe property damage* means substantial physical damage to property, damage to the user's treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

*Significant industrial user* or SIU means any industrial user that discharges wastewater into a publicly

owned treatment works and that:

- (1) Discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewaters) or
- (2) Contributes process wastewater which makes up five percent or more of the NPDES or Non-discharge permitted flow limit or organic capacity of the POTW treatment plant. **In this context, organic capacity refers to BOD, TSS, and Ammonia; or**
- (3) Is subject to Categorical Pretreatment Standards under 40 CFR Part 403.6 and 40 CFR Chapter I, Subchapter N, Parts 405-471; or
- (4) Is designated as such by the Control Authority on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operations, or for violating any Pretreatment Standard or requirement, or for contributing to violations of the POTW's effluent limitations and conditions in its NPDES or non-discharge permit, or for contributing to violations of the POTW's receiving stream standard, or for limiting the POTW's sludge disposal options.
- (5) **Subject to Division approval under 15A NCAC 02H .0907(b), the Control Authority may determine that an Industrial User meeting the criteria in paragraphs (A) and (B) above has no reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standards or requirement, or for contributing to violations of the POTW's effluent limitations and conditions in its NPDES or non-discharge permit, or for contributing to violations of the POTW's receiving stream standard, or for limiting the POTW's sludge disposal options, and thus is not a Significant Industrial User.**
- (6) **Subject to Division approval under 15A NCAC 02H .0907(b), the Control Authority may determine that an Industrial User meeting the criteria in paragraph (C) above meets the requirements of 40 CFR Part 403.3(v)(2) and thus is a Non-Significant Categorical Industrial User.**
- (7) **Subject to Division approval under 15A NCAC 02H .0907(b), the Control Authority may determine that an Industrial User meeting the criteria in paragraph (C) above meets the requirements of 40 CFR Part 403.12(e)(3) and thus is a Middle Tier Significant Industrial User. Sampling and inspection requirements may be cut in half as per 40 CFR Parts 403.8 (f)(2)(v)(C).and 403.12 (e)(3).**

*Significant noncompliance* or *SNC* is the status of noncompliance of a Significant Industrial User when one or more of the following criteria are met. **Additionally, any Industrial User which meets the criteria in Subparagraph (a)(935), Parts (C), (D), or (H) shall also be SNC.**

- (1) ***Chronic violations.*** Chronic violations of wastewater discharge limits, defined here as those in which sixty-six (66) percent or more of all the measurements taken for the same pollutant parameter (not including flow) during a six month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR Part 403.3(l);
- (2). **Technical Review Criteria (TRC) violations, defined here as those in which thirty-three (33) percent or more of all the measurements taken for the same pollutant parameter during a six-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR Part 403.3(l) multiplied by the applicable TRC; (TRC = 1.4 for BOD, TSS, fats, oil and grease, 1.2 for all other pollutants (except flow and pH);**
- (3). **Any other violation of a Pretreatment Standard or Requirement as defined by 40 CFR Part 403.3(l) (daily maximum, long-term average, instantaneous limit, or narrative standard) that the Control Authority and/or POTW determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel**



or the general public);

(4) Any discharge of a pollutant or wastewater that has caused imminent endangerment to human health, welfare or to the environment or has resulted in either the Control Authority's or the POTW's, if different from the Control Authority, exercise of its emergency authority under 40 CFR Part 403.8(f)(1)(vi)(B) and Section 70-341 of this SUO to halt or prevent such a discharge;

(5) Violations of compliance schedule milestones, contained in a pretreatment permit or enforcement order, for starting construction, completing construction, and attaining final compliance by 90 days or more after the schedule date.

(6). Failure to provide reports for compliance schedule, self-monitoring data, baseline monitoring reports, 90-day compliance reports, and compliance reports within 30 days from the due date.

(7). Failure to accurately report noncompliance.

(8). Any other violation or group of violations that the Control Authority determines ~~is significant~~ will adversely affect the operation or implementation of the local pretreatment program.

*Slug load or discharge* means any discharge at a flow rate or concentration which has a reasonable potential to cause interference or pass-through, or in any other way violates the POTW's regulations, local limits, or industrial user permit conditions. This can include but is not limited to spills and other accidental discharges; discharges of a non-routine, episodic nature; a non-customary batch discharge; or any other discharges that can cause a violation of the prohibited discharge standards in section 70-92.

*Standard industrial classification (SIC)* means a classification pursuant to the standard industrial classification manual issued by the Executive Office of the President, Office of Management and Budget, 1987.

*Storm water* means any flow occurring during or following any form of natural precipitation and resulting therefrom.

*Suspended solids* means the total suspended matter that floats on the surface of, or is suspended in, water, wastewater or other liquids, and which is removable by laboratory filtering.

*Upset* means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities lack of preventive maintenance, or careless or improper operation.

*User* means any person who contributes, causes or permits the contribution of wastewater into the city's POTW.

*Wastewater* means the liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities, mobile sources, treatment facilities and institutions, together with any groundwater, surface water, and storm water that may be present, whether treated or untreated, which are contributed into or permitted to enter the POTW.

*Wastewater permit* means the approval to discharge into the city sewer system that is required for certain Users and is further described in this article.

*Waters of the state* means all streams, rivers, brooks, swamps, sounds, tidal estuaries, bays, creeks, lakes, waterways, reservoirs and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border

upon the state or any portion thereof.

- (b) This article is gender neutral and the masculine gender shall include the feminine and vice-versa.
- (c) Shall is mandatory; may is permissive or discretionary.
- (d) The use of the singular shall be construed to include the plural and the plural shall include the singular as indicated by the context of its use.
- (e) The following abbreviations when used in this article, shall have the designated meanings:

(1)	BOD	Biochemical oxygen demand
(2)	CFR	Code of Federal Regulations
(3)	COD	Chemical oxygen demand
(4)	EPA	Environmental Protection Agency
(5)	gpd	Gallons per day
(6)	l	Liter
(7)	mg	Milligrams
(8)	mg/l	Milligrams per liter
(9)	N.C.G.S.	North Carolina General Statutes
(10)	NPDES	National pollution discharge elimination system
(11)	O & M	Operation and maintenance
(12)	POTW	Publicly owned treatment works
(13)	RCRA	Resource Conservation and Recovery Act
(14)	SIC	Standard industrial classification
(15)	SWDA	Solid Waste Disposal Act
(16)	TSS	Total suspended solids
(17)	TKN	Total Kjeldahl nitrogen
(18)	U.S.C	United States Code.

(Ord. No. 13523, 12-17-2007)  
Secs. 70-189--70-215. Reserved.

## **DIVISION 2. GENERAL SEWER USE REQUIREMENTS**

### **Sec. 70-216. Prohibited discharge standards**

(a) *General prohibitions.* No user shall contribute or cause to be contributed into the POTW, directly or indirectly, any pollutant or wastewater which causes interference or pass through. These general prohibitions apply to all users of a POTW whether or not the user is a significant industrial user or subject to any national, state, or local pretreatment standards or requirements.

(b) *Specific prohibitions.* No user shall contribute or cause to be contributed into the POTW the following pollutants, substances, or wastewater:

- (1) Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, waste streams with a closed cup flashpoint of less than 140° (60°) using the test methods specified in 40 CFR 261.21.
- (2) Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in interference but in no case solids greater than one-half-inch in any dimension.
- (3) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through.
- (4) Any wastewater having a pH less than 5.0 or more than 12.0 or wastewater having any



other corrosive property capable of causing damage to the POTW or equipment.

(5) Any wastewater containing pollutants, including oxygen-demanding pollutants, (BOD, etc) in sufficient quantity, (flow or concentration) either singly or by interaction with other pollutants, to cause interference with the POTW.

(6) Any wastewater having a temperature greater than 150° (66°), or which will inhibit biological activity in the POTW treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104° (40°).

(7) Any pollutants which result in the presence of toxic gases, vapors or fumes within the POTW in a quantity that may cause acute worker health and safety problems.

(8) Any trucked or hauled pollutants, except at discharge points designated by the director in accordance with section 70-224.

(9) Any noxious or malodorous liquids, gases, or solids or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for maintenance and repair.

(10) Any substance which may cause the POTW's effluent or any other product of the POTW such as residues, sludges, or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case, shall a substance discharged to the POTW cause the POTW to be in noncompliance with sludge use or disposal regulations or permits issued under section 405 of the Act; the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or state criteria applicable to the sludge management method being used.

(11) Any wastewater which imparts color which cannot be removed by the treatment process, including, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts sufficient color to the treatment plant's effluent to render the waters injurious to public health or secondary recreation or to aquatic life and wildlife or to adversely affect the palatability of fish or aesthetic quality or impair the receiving waters for any designated uses.

(12) Any wastewater containing any radioactive wastes or isotopes except as specifically approved by the director in compliance with applicable state or federal regulations.

(13) Storm water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, noncontact cooling water and unpolluted industrial wastewater, unless specifically authorized by the director.

(14) Fats, oils, or greases of animal or vegetable origin in concentrations greater than 250 mg/l.

(15) Any sludges, screenings or other residues from the pretreatment of industrial wastes.

(16) Any medical wastes, except as specifically authorized by the director in a wastewater discharge permit.

(17) Any material containing ammonia, ammonia salts, or other chelating agents which will produce metallic complexes that interfere with the municipal wastewater system.

(18) Any material that would be identified as hazardous waste according to 40 CFR Part 261 if not disposed of in a sewer except as may be specifically authorized by the director.

(19) Any wastewater causing the treatment plant effluent to violate state water quality standards for toxic substances as described in 15A NCAC 2B .0200.

(20) Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test.

(21) Recognizable portions of the human or animal anatomy.

(22) Any wastes containing detergents, surface active agents, or other substances which may cause excessive foaming in the municipal wastewater system.

(23) At no time, shall two successive readings on an explosion hazard meter, at the point of discharge into the system (or at any point in the system) be more than five percent nor any single reading over ten percent of the lower explosive limit (LEL) of the meter.

Pollutants, substances, wastewater, or other wastes prohibited by this section shall not be processed or

stored in such a manner that they could be discharged to the municipal wastewater system. All floor drains located in process or materials storage areas must discharge to the industrial user's pretreatment facility before connecting with the system.

When the Director determines that a user(s) is contributing to the POTW, any of the above enumerated substances in such amounts which may cause or contribute to interference of POTW operation or pass through, the Director shall:

- 1) Advise the user(s) of the potential impact of the contribution on the POTW in accordance with section 70-341; and
- 2) Take appropriate actions in accordance with division 4 for such user to protect the POTW from interference or pass through.

(Ord. No. 13523, 12-17-2007)

### **Sec. 70-217. National categorical pretreatment standards.**

Users subject to categorical pretreatment standards are required to comply with applicable standards as set out in 40 CFR Chapter 1, Subchapter N, Parts 405--471 and incorporated herein.

- (1) Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the director may impose equivalent concentration or mass limits in accordance with 40 CFR 403.6(c).
- (2) When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the director shall impose an alternate limit using the combined wastestream formula in 40 CFR 403.6(e).
- (3) A user may obtain a variance from a categorical pretreatment standard if the user can prove, pursuant to the procedural and substantive provisions in 40 CFR 403.13, that factors relating to its discharge are fundamentally different from the factors considered by EPA when developing the categorical pretreatment standard.
- (4) A user may obtain a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15.
- (5) A user may request a removal credit adjustment to a categorical standard in accordance with 40 CFR 403.15.

(Ord. No. 13523, 12-17-2007)

### **Sec. 70-218. Local limits.**

An industrial waste survey is required prior to a user discharging wastewater containing in excess of the following average discharge limits.

BOD	250	mg/l	
TSS	250	mg/l	
NH <sub>3</sub>	25	mg/l	
Arsenic	0.003	mg/l	
Cadmium	0.003	mg/l	
Chromium	0.05	mg/l	(total chromium)
Copper	0.061	mg/l	
Cyanide	0.015	mg/l	
Lead	0.049	mg/l	

Mercury	0.0003	mg/l
Nickel	0.021	mg/l
Silver	0.005	mg/l
Zinc	0.175	mg/l

Industrial waste survey information will be used to develop user-specific local limits when necessary to ensure that the POTW's maximum allowable headworks loading are not exceeded for particular pollutants of concern. User-specific local limits for appropriate pollutants of concern shall be included in wastewater permits. The director may impose mass based limits in addition to, or in place of concentration based limits.

(Ord. No. 13523, 12-17-2007)

#### **Sec. 70-219. State requirements.**

State requirements and limitations on discharges shall apply in any case where they are more stringent than federal requirements and limitations or those in this article.

(Ord. No. 13523, 12-17-2007)

#### **Sec. 70-220. Right of revision.**

The city reserves the right to establish limitations and requirements which are more stringent than those required by either state or federal regulation if deemed necessary to comply with the objectives presented in section 70-187 or the general and specific prohibitions in section 70-216, as is allowed by 40 CFR 403.4.

(Ord. No. 13523, 12-17-2007)

#### **Sec. 70-221. Dilution.**

No user shall ever increase the use of process water or, in any way, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in the national categorical pretreatment standards, unless expressly authorized by an applicable pretreatment standard, or in any other pollutant-specific limitation developed by the city or state.

(Ord. No. 13523, 12-17-2007)

#### **Sec. 70-222. Pretreatment of wastewater.**

(a) *Pretreatment facilities.* Users shall provide wastewater treatment as necessary to comply with this article and wastewater permits issued under section 70-262 and shall achieve compliance with all national categorical pretreatment standards, local limits, and the prohibitions set out in section 70-216 within the time limitations as specified by EPA, the state, or the director, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the city for review, and shall be approved by the director before construction of the facility.

The review of such plans and operating procedures shall in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the city under the provisions of this article. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be approved by the director prior to the user's initiation of the changes.

(b) *Additional pretreatment measures.*

(1) Whenever deemed necessary, the director may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams, and such other conditions as may be necessary to protect the POTW and determine the user's compliance with the requirements of this article.

(2) The director may require any person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. A wastewater discharge permit may be issued solely for flow equalization.

(3) *Fat, oil, grease and sand removal systems.*

a. *When removal systems are required.* Certain users that prepare, process, or serve food shall install a removal system meeting approved standards that removes and collects fat, oil, and grease from wastewater and shall establish acceptable standard operating procedures for grease disposal. Such users include but are not limited to grocery stores, restaurants, bakeries, and companies, schools, and institutions with on-site cafeterias. The director shall promulgate guidelines that implement this section. These guidelines may, among other things, further define and categorize those users covered by this requirement, and distinguish amongst them; specify the types of removal systems the various categories of establishments must install and the specifications of such systems; establish cleaning schedules for various types of removal systems and frequency of removal of the fat, oil, and grease from the establishment. Other users that generate sand, oil and grease such as car washes, and automotive and machine shops shall install sand, oil, and grease removal systems when the director notifies the user of the need for such system or when it is required by the plumbing code.

b. *Prohibited discharges into a user's fat, oil and grease removal system.* The following shall not be discharged into any fat, oil, and grease removal system:

1. Waste that does not contain fat, oil, grease, and that otherwise does not require treatment;
2. Wastewater from dish washing machines or wastewater with temperature exceeding 150°;
3. Ground residue from food waste grinders and garbage disposals;
4. Sanitary waste;
5. Emulsifiers, chemicals, and enzymes.

c. *Maintenance and cleaning of system; maintenance of records.* Users with removal systems shall clean such systems in accordance with the director's guidelines. Such users shall maintain cleaning records showing the date and time of cleaning and person doing the cleaning for a period of three years.

d. *Collection of fat, oil, and grease; maintenance of records.* Users shall contract for the removal of the fat, oil, and grease collected from the removal system. The contract shall be available on site for inspection by the city. The user shall require the contractor to complete a form provided by the city indicating the ultimate disposition of the fat, oil, and grease collected--e.g., the location of the landfill it is being taken to, if it is conveyed to such landfill, or whether the fat, oil, and grease are being reprocessed or rendered. The user shall also require the contractor to indicate on a form, which, if it is not the city's form, shall be acceptable to the city, each collection made from the user. Such form shall

be maintained for a period of three years.

e. *Monitoring of discharge.* The director or designee may require that any user monitor and test their discharge for fat, oil, grease, and/or sand in such a manner and with such methods as are specified by the director. All monitoring results shall be shared with the city. In addition, as a condition of discharging to the system, all users may be monitored by the city without prior notice.

f. *Variances.* The director is authorized to vary application and enforcement of this section in cases where pre-existing users cannot site outside removal systems without extreme hardship because of lack of available adjacent land or other similar circumstances.

g. *Exemptions.* Users that existed prior to October 15, 2001 and have an average monthly water consumption of 1,500 cubic feet or less and which do not discharge more than 250 mg/liter of fat, oil, and grease are exempted from these requirements. Users may be required to prove that they qualify for exemption.

(4) Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

(Ord. No. 13523, 12-17-2007)

#### **Sec. 70-223. Accidental discharge/slug control plans.**

(a) The director shall evaluate whether each significant industrial user needs a plan or other action to control and prevent slug discharges and accidental discharges as defined in section 70-188. All SIUs must be evaluated within one year of being designated an SIU. The director may require any user to develop, submit for approval, and implement such a plan or other specific action. Alternatively, the director may develop such a plan for any user.

(b) All SIUs are required to notify the POTW immediately of any changes at its facility affecting the potential for spills and other accidental discharge, discharge of a non-routine, episodic nature, a non-customary batch discharge, or a slug load. Also see sections 70-285 and 70-286.

(c) An accidental discharge/slug control plan shall address, at a minimum, the following:

(1) Description of discharge practices, including non-routine batch discharges;

(2) Description of stored chemicals;

(3) Procedures for immediately notifying the director of any accidental or slug discharge, as required by section 70-286; and

(4) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

(Ord. No. 13523, 12-17-2007)

#### **Sec. 70-224. Hauled wastewater.**

(a) Septic tank waste may be introduced into the POTW only at locations designated by the director, and at such times as are established by the director. Such waste shall not violate division 2 or any other requirements established by the city. The director may require septic tank waste haulers to obtain wastewater discharge permits.

(b) The director shall require haulers of industrial waste to obtain wastewater discharge permits. The

director may require generators of hauled industrial waste to obtain wastewater discharge permits. The director also may prohibit the disposal of hauled industrial waste. The discharge of hauled industrial waste is subject to all other requirements of this article.

(c) Industrial waste haulers may discharge loads only at locations designated by the director. No load may be discharged without prior consent of the director. The director may collect samples of each hauled load to ensure compliance with applicable standards. The director may require the industrial waste hauler to provide a waste analysis of any load prior to discharge.

(d) Industrial waste haulers must provide a waste-tracking form for every load. This form shall include, at a minimum, the name and address of the industrial waste hauler, permit number, truck identification, names and addresses of sources of waste, and volume and characteristics of waste. The form shall identify the type of industry, known or suspected waste constituents, and whether any wastes are RCRA hazardous wastes.

(Ord. No. 13523, 12-17-2007)

Secs. 70-225--70-240. Reserved.

### **DIVISION 3. FEES**

#### **Sec. 70-241. Purpose.**

It is the purpose of this section to provide for the recovery of costs from users of the wastewater disposal system of the city for the implementation of the program established herein. The applicable charges or fees shall be set forth in a schedule of sewer use charges and fees by the director and approved by the city council. A copy of these charges and fees will be made available from the director.

(Ord. No. 13523, 12-17-2007)

#### **Sec. 70-242. User charges and credits.**

Users shall pay sewer charges and surcharges as provided in City Code provisions on rates and surcharges. In addition to the basic sewer service charge, all users of the POTW are subject to surcharges as are described below and in other City Code sections. The director may approve a sewer credit if a user produces evidence that more than ten percent of the total annual volume of water consumed is not returned to the sewer. Evidence produced must include 12 months of data; all meters used to determine such evidence shall be calibrated at least annually. A percent sewer credit may be applied to the sewer account. The director may require the user to install appropriate meters and submit monthly readings to the director in order to receive a sewer credit. Updates to the original submission shall be submitted annually to the director to confirm the continued justification of sewer credit.

(Ord. No. 13523, 12-17-2007)

#### **Sec. 70-243. Surcharges.**

The city may adopt fees for surcharges based upon the volume of flow and the character and concentration of identified constituents of the wastewater:

- (1) The volume of flow used in determining surcharges shall be based on metered water consumption or other measuring techniques or flow monitoring devices as may be approved by



the director. Any flow monitoring devices shall be accessible to the city and safely located, and paid for by the user.

(2) The character and concentration of the constituents of the wastewater used in determining surcharges shall be determined by samples collected and analyzed by the city. Samples shall be representative of the actual discharge and shall be analyzed using procedures set forth in 40 CFR Part 136. Character and concentration may be determined for categories of users, based on sampling. Upon approval by the director, users may also submit data from samples taken by the user using city-approved procedures.

(3) The determination of the character and concentration of the constituents of the wastewater discharge by the director shall be binding as a basis for charges.

(Ord. No. 13523, 12-17-2007)

#### **Sec. 70-244. Pretreatment program administration charges.**

The schedule of charges and fees adopted by the city may include charges and fees for:

- (1) Reimbursement of costs of setting up and operating the pretreatment program;
- (2) Monitoring, inspections and surveillance procedures;
- (3) Reviewing slug control plans, including accidental and/or slug load discharge procedures and construction plans and specifications;
- (4) Applications;
- (5) Permitting;
- (6) Other fees as the city may deem necessary to carry out the requirements of the pretreatment program.

(Ord. No. 13523, 12-17-2007)

Secs. 70-245--70-260. Reserved.

### **DIVISION 4. WASTEWATER DISCHARGE PERMIT APPLICATION AND ISSUANCE**

#### **Sec. 70-261. Wastewater dischargers.**

It shall be unlawful for any person to connect or discharge to the POTW without first obtaining the permission of the city. When requested by the director, a user must submit information on the nature and characteristics of its wastewater within 30 days of the request. The director is authorized to prepare a form for this purpose and may periodically require users to update this information.

(Ord. No. 13523, 12-17-2007)

#### **Sec. 70-262. Wastewater permits.**

All significant industrial users shall obtain a significant industrial user permit prior to the commencement of discharge to the POTW. Existing industrial users who are determined by the director to be significant industrial users shall obtain a significant industrial user permit within 180 days of receiving notification of the director's determination. Industrial users who do not fit the significant industrial user criteria may at the discretion of the director be required to file a permit application and/or to obtain a wastewater discharge permit for non-significant industrial users.

(1) *Significant industrial user determination.* All persons proposing to discharge non-domestic wastewater, or proposing to change the volume or characteristics of an existing discharge of non-domestic wastewater shall request from the director a significant industrial user determination. If the director determines or suspects that the proposed discharge fits the significant industrial user criteria he will require that a significant industrial user permit application be filed.

(2) *Significant Industrial User Permit Application*

Users required to obtain a significant industrial user permit shall complete and file with the [Town], an application in the form prescribed by the [POTW Director], and accompanied by an application fee in the amount prescribed in the schedule of charges and fees. **Significant industrial users shall apply for a significant industrial user permit within 90 days after notification of the POTW Director's determination in 70-262 (1) above. The application shall include at a minimum:**

- (A) name of industrial user;
- (B) address of industrial user;
- (C) standard industrial classification (SIC) code(s) or expected classification and industrial user category;
- (D) wastewater flow;
- (E) types and concentrations (or mass) of pollutants contained in the discharge;
- (F) major products manufactured or services supplied;
- (G) description of existing on-site pretreatment facilities and practices;
- (H) locations of discharge points;
- (I) raw materials used or stored at the site;
- (J) flow diagram or sewer map for the industrial user;
- (K) number of employees;
- (L) operation and production schedules; and
- (M) description of current and projected waste reduction activities in accordance with G.S. 143-215.1(g);

(3) *Application signatories and certification.* All wastewater discharge permit applications and user reports must be signed by the current authorized representative of the user on file with the director and must contain the following certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(4) *Application review and evaluation.* The director will evaluate the data furnished by the user and may require additional information.

- a. The director is authorized to accept applications for the city and shall refer all applications to the POTW staff for review and evaluation.
- b. **Within 45 days** of receipt the director shall acknowledge and accept the complete application; or if not complete, shall return the application to the applicant with a statement of what additional information is required.

(5) *Tentative determination and draft permit.*

- a. The POTW staff shall conduct a review of the application and an on-site inspection of the significant industrial user, including any pretreatment facilities, and shall prepare a written evaluation and tentative determination to issue or deny the significant industrial user permit.
- b. If the staff's tentative determination in subsection a. is to issue the permit, the following additional determinations shall be made in writing:
  1. Proposed discharge limitations for those pollutants proposed to be limited;
  2. A proposed schedule of compliance, including interim dates and requirements, for meeting the proposed limitations; and
  3. A brief description of any other proposed special conditions which will have significant impact upon the discharge described in the application.
- c. The staff shall organize the determinations made pursuant to subsections a. and b. and the general permit conditions of the City into a significant industrial user permit.

**(6) *Permit supporting documentation.*** The Control Authority staff shall prepare the following documents for all Significant Industrial User permits.

- a.. An allocation table (AT) listing permit information for all Significant Industrial Users, including but not limited to permit limits, permit effective and expiration dates, and a comparison of total permitted flows and loads with Division approved maximum allowable loadings of the POTW, including flow, on forms or in a format approved by the Division. The AT shall be updated as permits are issued or renewed, and as permits are modified where the permitted limits or other AT information is revised.
- b.. The basis, or rationale, for the pretreatment limitations, including the following:
  1. documentation of categorical determination, including documentation of any calculations used in applying categorical pretreatment standards; and
  2. documentation of the rationale of any parameters for which monitoring has been waived under 40 CFR Part 403.12(e)(2).

**(7) *Permit synopsis.*** A fact sheet providing a brief synopsis of the application shall be prepared by the POTW staff for submission to the applicant and the approval authority and shall be made available to the public upon request. The contents of such fact sheets shall include at least the following information:

- a. A sketch and detailed description of the industrial facilities and pretreatment facilities including the location of all points of discharge to the POTW and all established compliance monitoring points.
- b. A quantitative description of the discharge described in the application which includes at least the following:
  1. The rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow;
  2. The actual average daily discharge in pounds per day of any limited pollutant and any pollutant identified in the application as known or suspected present; and
  3. The basis for the pretreatment limitations including the documentation of any calculations in applying categorical pretreatment standards.

**(8) *Final action on significant industrial user permit applications.***

- a. The director shall take final action on all applications not later than 90 days following receipt of a complete application.
- b. The director is authorized to:
  1. Issue a significant industrial user permit containing such conditions as are necessary to effectuate the purposes of this article and G.S. 143-215.1;
  2. Issue a significant industrial user permit containing time schedules for achieving compliance with applicable pretreatment standards and requirements;
  3. Modify any permit pursuant to the procedures specified hereafter in this article;

4. Revoke any permit pursuant to the procedures specified hereafter in this article;
  5. Suspend a permit pursuant procedures specified hereafter in this article;
  6. Deny a permit application when in the opinion of the director such discharge may cause or contribute to pass-through or interference of the wastewater treatment plant or where necessary to effectuate the purposes of G.S. 143-215.1.
- c. The hearing procedures specified hereafter in this article may be utilized to appeal a final action on a permit.

(9) *Permit modification.*

- a. Modifications of permits shall be subject to the same procedural requirements as the issuance of permits except as listed below. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.
  1. Changes in the ownership of the discharge when no other change in the permit is indicated;
  2. A single modification of any compliance schedule not in excess of four months;
  3. Modification of compliance schedules (construction schedules) in permits for new sources where the new source will not begin to discharge until control facilities are operational.
- b. Within nine months of the promulgation of a national categorical pretreatment standard, the wastewater discharge permit of users subject to such standards shall be revised to require compliance with such standard within the time frame prescribed by such standard. Where a user, subject to a national categorical pretreatment standard, has not previously submitted an application for a wastewater discharge permit as required by this article, the user shall apply for a wastewater discharge permit within 180 days after the promulgation of the applicable national categorical pretreatment standard.
- c. A request for a modification by the permittee shall constitute a waiver of the 60-day notice required by G.S. 143-215.1(b) for modifications.

(10) *Permit conditions.*

- a. The director shall have the authority to grant a permit with such conditions attached as he believes necessary to achieve the purpose of this article and G.S. 143-215.1. Wastewater permits shall contain, but are not limited to, the following:
  1. A statement of duration (in no case more than five years);
  2. A statement of non-transferability;
  3. Applicable effluent limits based on categorical standards or local limits or both;
  4. Applicable monitoring, sampling, reporting, notification, and record keeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on federal, state and local law;
  5. Requirements for notifying the POTW in the event of an accidental discharge or slug load;
  6. Requirements to implement a plan or other controls including but not limited to construction of pretreatment facilities for prevention of accidental discharges and/or slug loads, if determined by the director to be necessary for the user; and
  7. Requirements for immediately notifying the POTW of any changes at its facility affecting the potential for spills and other accidental discharges, or slug load. Also see sections 70-285 and 70-286;
  8. A statement of applicable civil and/or criminal penalties for violation of pretreatment standards and requirements and any applicable compliance schedule.
- b. In addition, permits may contain, but are not limited to, the following:

1. Limits on the average and/or maximum rate of discharge, and/or requirements for flow regulation and equalization.
  2. Limits on the instantaneous, daily **and/or** monthly average and/or maximum concentration, mass, or other measure of identified wastewater pollutants or properties.
  3. Requirements for the installation of pretreatment technology or construction of appropriate containment devices, etc., designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works.
  4. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the municipal wastewater system.
  5. The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the system.
  6. Requirements for installation and maintenance of inspection and sampling facilities and equipment.
  7. Specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types, and standards for tests, and reporting schedules.
  8. Requirements for immediate reporting of any instance of noncompliance and for automatic resampling and reporting within 30 days where self-monitoring indicates a violation(s).
  9. Compliance schedules for meeting pretreatment standards and requirements.
  10. Requirements for submission of periodic self-monitoring or special notification reports.
  11. Requirements for maintaining and retaining plans and records relating to wastewater discharges as set forth hereafter in this article, and affording the director, or his representatives, access thereto.
  12. Requirements for prior notification and approval by the director of any new introduction of wastewater pollutants or of any significant change in the volume or character of the wastewater prior to introduction in the system.
  13. Requirements for the prior notification and approval by the director of any change in the manufacturing and/or pretreatment process used by the permittee.
  14. A statement that compliance with the permit does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards, including those which become effective during the terms of the permit.
  15. Other conditions as deemed appropriate by the director to ensure compliance with this article, and state and federal laws, rules, and regulations.
- (11) *Permit duration.* Permits shall be issued for a specified time period, not to exceed five years. A permit may be issued for a period less than a year or may be stated to expire on a specific date.
- (12) *Permit transfer.* Wastewater permits are issued to a specific user for a specific operation. A wastewater discharge permit shall not be reassigned or transferred or sold to a new owner, new user, different premises, or a new or changed operation.
- (13) *Permit reissuance.* A significant industrial user shall apply for permit reissuance by submitting a complete permit application in accordance with this article a minimum of 180 days prior to the expiration of the existing permit.

(Ord. No. 13523, 12-17-2007)

Secs. 70-263--70-280. Reserved.

## **DIVISION 5. REPORTING REQUIREMENTS**

### **Sec. 70-281. Baseline monitoring reports.**

(a) Within either 180 days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing categorical users currently discharging to or scheduled to discharge to the POTW shall submit to the director a report which contains the information listed in subsection (b). At least ninety (90) days prior to commencement of their discharge, new sources, and sources that become categorical users subsequent to the promulgation of an applicable categorical standard, shall submit to the director a report which contains the information listed in subsection (b). A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.

(b) Users described above shall submit the information set forth below.

(1) *Identifying information.* The name and address of the facility, including the name of the operator and owner.

(2) *Environmental permits.* A list of any environmental control permits held by or for the facility.

(3) *Description of operations.* A brief description of the nature, average rate of production, and standard industrial classifications of the operation(s) carried out by such user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes.

(4) *Flow measurement.* Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined waste stream formula set out in 40 CFR 403.6(e).

(5) *Measurement of pollutants.*

a. The categorical pretreatment standards applicable to each regulated process.

b. The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the standard or by the director, of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be reported. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in section 70-290.

c. Sampling must be performed in accordance with procedures set out in section 70-291 and 40 CFR 403.12(b) and (g), including 40 CFR 403.12(g)(4).

(6) *Certification.* A statement, reviewed by the user's current authorized representative and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the pretreatment standards and requirements.

(7) *Compliance schedule.* If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements of this article.

(8) *Signature and certification.* All baseline monitoring reports must be signed and certified in accordance with subsection 70-106(3).

(Ord. No. 13523, 12-17-2007)

### **Sec. 70-282. Compliance schedule progress reports.**

The following conditions shall apply to the compliance schedule required in the previous section of this



article:

- (1) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation);
- (2) No increment referred to above shall exceed nine months;
- (3) The user shall submit a progress report to the director no later than 14 days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule; and
- (4) In no event shall more than nine months elapse between such progress reports to the director.

(Ord. No. 13523, 12-17-2007)

#### **Sec. 70-283. Reports on compliance with categorical pretreatment standard, deadline.**

Within 90 days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any user subject to such pretreatment standards and requirements shall submit to the director a report containing the information described in subsections 70-281(b)(4)–(6). For users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the user's long-term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with subsection 70-262(3).

(Ord. No. 13523, 12-17-2007)

#### **Sec. 70-284. Periodic compliance reports.**

Municipalities may sample and analyze user discharges in lieu of requiring the users to conduct sampling and analysis.

- (1) All significant industrial users shall, at a frequency determined by the director but in no case less than once every six months, submit a report indicating the nature and concentration of pollutants in the discharge which are limited by pretreatment standards and the applicable flows for the reporting period. Sampling and analysis must be performed in accordance with procedures set out hereafter. All periodic compliance reports must be signed and certified in accordance with subsection 70-106(3).
- (2) If a user subject to the reporting requirement in this section monitors any pollutant more frequently than required by the director, using the procedures prescribed hereafter in this article, the results of this monitoring shall be included in the report.

(Ord. No. 13523, 12-17-2007)

#### **Sec. 70-285. Reports of changed conditions.**

Each user must notify the director of any planned significant changes to the user's operations or system which might alter the nature, quality, or volume of its wastewater at least 30 days before the change.

**The permittee shall not begin the changes until receiving written approval from the Control Authority**

and/or Municipality. See Section 70-286 for other reporting requirements.

(1) The director may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under this article.

(2) The director may issue a wastewater discharge permit or modify an existing wastewater discharge permit in response to changed conditions or anticipated changed conditions.

(3) For purposes of this requirement, significant changes include, but are not limited to, flow or pollutant increases of 20 percent or greater, and the discharge of any previously unreported pollutants

Change may also include increases or decreases to production; increases in discharge of previously reported pollutants; discharge of pollutants not previously reported to the Control Authority and/or Municipality; new or changed product lines; new or changed manufacturing processes and/or chemicals; or new or changed customers.

(Ord. No. 13523, 12-17-2007)

#### **Sec. 70-286. Reports of potential problems.**

(a) In the case of any discharge, including, but not limited to, accidental discharges, discharges of a non-routine, episodic nature, a non-customary batch discharge, or a slug load, that may cause potential problems for the POTW, the user shall immediately telephone and notify the director of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.

(b) Within five days following such discharge, the user shall, unless waived by the director, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, penalties, or other liability which may be imposed pursuant to this article.

(c) A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees whom to call in the event of a discharge described in subsection (a). Employers shall ensure that all employees, who may cause such a discharge to occur, are advised of the emergency notification procedure.

(d) All SIUs are required to notify the POTW immediately of any changes at its facility affecting the potential for spills and other accidental discharge, discharge of a non-routine, episodic nature, a non-customary batch discharge, or a slug load.

(Ord. No. 13523, 12-17-2007)

#### **Sec. 70-287. Reports from users without permits.**

All users not required to obtain a wastewater discharge permit shall provide appropriate reports to the director as the director may require. All users classified as Non-Significant Categorical Industrial Users under Section 70-188(a)(SIU definition 6) shall provide appropriate reports to the Director as the Director may require. At a minimum, this shall include the Annual Certification of continuing to meet the Non-Significant Categorical Industrial User criteria as required under 40 CFR 403.12(q).

(Ord. No. 13523, 12-17-2007)

#### **Sec. 70-288. Notification of violation/repeat sampling and reporting.**

(a) If sampling performed by a user indicates a violation, the user must notify the director within 24

hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the director within 30 days after becoming aware of the violation. If allowed by the director, the user is not required to resample if:

- (1) The director monitors at the user's facility at least once a month; or
- (2) The director samples between the user's initial sampling and when the user receives the results of this sampling.

(b) If the Director has performed the sampling and analysis in lieu of the industrial user and the POTW sampling of the user indicates a violation, the Director shall repeat the sampling and obtain the results of the repeat analysis within 30 days after becoming aware of the violation(s), unless one of the following occurs:

- (1) The director monitors at the user's facility at least once a month; or
- (2) The director samples the user between their initial sampling and when the POTW receives the results of this initial sampling; or
- (3) The director requires the user to perform sampling and submit the results to the director within the 30-day deadline of the POTW becoming aware of the violation.

(Ord. No. 13523, 12-17-2007)

#### **Sec. 70-289. Notification of the discharge of hazardous waste.**

Users are prohibited from disposing of hazardous waste except as specifically authorized by the Director. Users authorized to dispose of hazardous waste must comply with 40 CFR 403.12(p).

(Ord. No. 13523, 12-17-2007)

#### **Sec. 70-290. Analytical requirements.**

All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed by a laboratory certified by the State to perform the wastewater analyses in accordance with the techniques prescribed in 40 CFR Part 136, unless otherwise specified in an applicable categorical pretreatment standard or unless otherwise performed in accordance with procedures approved by the EPA or City. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses must be performed in accordance with procedures approved by the EPA and City.

(Ord. No. 13523, 12-17-2007)

#### **Sec. 70-291. Grab and composite sample collection.**

(a) All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a user to keep its monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.

(b) Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, volatile organic compounds, and any other pollutants as required by 40 CFR 136. The POTW shall determine the number of grabs necessary to be representative of the user's discharge. See 40 CFR 403.12(g)(5) for additional grab sample number requirements for BMR and 90-day compliance reports. Additionally, the director may allow collection of multiple grabs during a 24-hour period which are composited prior to analysis as allowed under 40 CFR 136.

(c) Composite samples. All wastewater composite samples shall be collected with a minimum of hourly

aliquots or grabs for each hour that there is a discharge. All wastewater composite samples shall be collected using flow proportional composite collection techniques, unless time-proportional composite sampling or grab sampling is authorized by the director. When authorizing time-proportional composites or grabs, the samples must be representative and the decision to allow the alternative sampling must be documented.

(Ord. No. 13523, 12-17-2007)

**Sec. 70-292. Timing.**

Written reports will be deemed to have been submitted on the date postmarked. For reports which are not mailed, postage prepaid, into a mail facility serviced by the United States Postal Service, the date of receipt of the report shall govern.

(Ord. No. 13523, 12-17-2007)

**Sec. 70-293. Record keeping.**

Users subject to the reporting requirements of this article shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this article and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements. Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three years. This period shall be automatically extended for the duration of any litigation concerning the user or the city, or where the user has been specifically notified of a longer retention period by the director.

(Ord. No. 13523, 12-17-2007)

**Sec. 70-294. Electronic reporting.**

The Director may develop procedures for receipt of electronic reports for any reporting requirements of this article. Such procedures shall comply with 40 CFR Part 3. These procedures shall be enforceable under division 8 of this Ordinance.

**Sec. 70-295. Special Reporting Requirements for IUs in Satellite POTWs**

In the case of industrial user located in a Satellite POTW organization's jurisdiction, all information required to be reported to the industrial user's Pretreatment Program Control Authority by this Ordinance shall also be reported to the POTW treatment plant organizations.

(Ord. No. 13523, 12-17-2007)

Secs. 70-296--70-315. Reserved.

**DIVISION 6. COMPLIANCE MONITORING**

**Sec. 70-316. Monitoring facilities.**

The city requires the user to provide and operate at the user's own expense, monitoring facilities to

allow inspection, sampling, and flow measurement of the building sewer and/or internal drainage systems. The monitoring facility should normally be situated on the user's premises, but the director may, when such a location would be impractical or cause undue hardship on the user, allow the facility to be constructed in the public street or sidewalk area and located so that it will not be obstructed by landscaping or parked vehicles.

There shall be ample room in or near such sampling manhole or facility to allow accurate sampling and preparation of samples for analysis. The facility, sampling, and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the user.

Whether constructed on public or private property, the sampling and monitoring facilities shall be provided in accordance with the requirements of the city and all applicable local construction standards and specifications. Construction shall be completed within 90 days following written authorization from the city to construct the facility.

(Ord. No. 13523, 12-17-2007)

#### **Sec. 70-317. Inspection and sampling.**

The City will inspect the facilities of any user to ascertain whether the purpose of this article is being met and all requirements are being complied with. Persons or occupants of premises where wastewater is created or discharged shall allow the City, approval authority and EPA or their representative ready access at all reasonable times to all parts of the premises for the purposes of inspection, sampling, records examination and copying or in the performance of any of their duties. The City, approval authority and EPA shall have the right to set up on the user's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and/or metering operations. Where a user has security measures in force which would require proper identification and clearance before entry into their premises, the user shall make necessary arrangements with their security guards so that upon presentation of suitable identification, personnel from the City, approval authority and EPA will be permitted to enter, without delay, for the purposes of performing their specific responsibilities. Denial of the City's approval authority's or EPA's access to the user's premises shall be a violation of this article. Unreasonable delays may constitute denial of access.

(Ord. No. 13523, 12-17-2007)

#### **Sec. 70-318. Search warrants.**

If the City, approval authority, or EPA has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this article, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the City designed to verify compliance with this article or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the director, approval authority, or EPA may seek issuance of a search warrant from the court having jurisdiction within the City.

(Ord. No. 13523, 12-17-2007)

Secs. 70-319--70-330. Reserved.

### **DIVISION 7. CONFIDENTIAL INFORMATION**

### **Sec. 70-331. Confidentiality.**

Information and data on a user obtained from reports, questionnaires, permit applications, permits and monitoring programs and from inspections shall be available to the public or other governmental agency without restriction unless the user specifically requests and is able to demonstrate to the satisfaction of the Director that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the user. Any such request must be asserted at the time of submission of the information or data.

When requested by the person furnishing a report, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available upon written request to governmental agencies for uses related to this article, the national pollutant discharge elimination system (NPDES) permit, non-discharge permit and/or the pretreatment programs; provided, however, that such portions of a report shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information.

All records relating to compliance with pretreatment standards shall be made available to city officials and EPA upon request.

(Ord. No. 13523, 12-17-2007)

Secs. 70-332--70-340. Reserved.

## **DIVISION 8. ENFORCEMENT**

### **Sec. 70-341. Administrative remedies.**

The director may utilize any or all of the following actions, singly or in combination for violations of this article and permits issued under authority of this article. Unless specifically provided herein, none of these remedies is a requisite to the director utilizing any other remedy. In addition, the use of these remedies does not limit the city's right to use any other remedy provided for under this article, state or federal law, or common law.

(1) *Notice of violation.* Whenever the director finds that any user or industrial user has violated or is violating this article, wastewater permit, or any prohibition, limitation or requirements contained therein or any other pretreatment requirement the director may serve upon such a person a written notice stating the nature of the violation. Within 30 days from the date of this notice, an explanation for the violation and a plan for the satisfactory correction thereof shall be submitted to the city by the user. Submission of this plan does not relieve the discharger of liability for any violations occurring before or after receipt of the notice of violation.

(2) *Consent orders.* The director is hereby empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the person responsible for the noncompliance. Such orders will include specific action to be taken by the discharger to correct the noncompliance within a time period also specified by the order. Consent orders shall have the same force and effect as an administrative order issued pursuant to this article.



(3) *Show cause proceeding.* The director may order any user or industrial user who causes or is responsible for an unauthorized discharge, has violated this article or is in noncompliance with a wastewater discharge permit to show cause why a proposed enforcement action should not be taken. The director shall notify the user specifying the time and place for the proceeding, the proposed enforcement action, the reasons for such action, and a request that the user show cause why this proposed enforcement action should not be taken. The notice of the proceeding shall be served personally or by registered or certified mail (return receipt requested) at least ten days before the proceeding. Service may be made on any agent or officer of a corporation. The director shall review the information presented at the proceeding and determine whether the proposed enforcement action is appropriate. A show cause proceeding under this section is not a prerequisite to the assessment of a civil penalty nor is any action or inaction taken by the director under this section subject to an administrative appeal.

(4) *Administrative orders.* When the director finds that a user or industrial user has violated or is violating this article, permits or orders issued hereunder, or any other pretreatment requirement the director may issue an order to cease and desist all such violations and direct those persons in noncompliance to do any of the following:

- a. Immediately comply with all requirements;
- b. Comply in accordance with a compliance time schedule set forth in the order;
- c. Take appropriate remedial or preventive action in the event of a continuing or threatened violation;
- d. Disconnect water and/or sewer service unless adequate treatment facilities, devices or other related appurtenances are installed and properly operated within a specified time period.

(5) *Emergency suspensions.* The director may suspend the wastewater treatment service and/or wastewater permit when such suspension is necessary in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the health or welfare of persons or the environment, interferes with the POTW or causes the POTW to violate any condition of its NPDES or non-discharge permit.

Any user notified of a suspension of the wastewater treatment service and/or the wastewater permit shall immediately stop or eliminate the contribution. An informal hearing will be held within 15 days of the notice of suspension to determine whether the suspension may be lifted or the user's waste discharge permit terminated. In the event of a failure to comply voluntarily with the suspension order, the director shall take such steps as deemed necessary including immediate severance of the sewer connection, to prevent or minimize damage to the POTW system or endangerment to any individuals. The director shall reinstate the wastewater permit and the wastewater treatment service upon proof of the elimination of the noncompliant discharge. The industrial user shall submit a detailed written statement describing the causes of the harmful contribution and the measures taken to prevent any future occurrence to the director prior to the date of the above-described hearing.

(6) *Termination of permit or permission to discharge.* The director may revoke a wastewater discharge permit or permission to discharge for good cause, including, but not limited to, the following reasons:

- a. Failure to accurately report the wastewater constituents and characteristics of his discharge;
- b. Failure to report significant changes in operations, or wastewater constituents and characteristics;
- c. Refusal of reasonable access to the user's premises for the purpose of inspection or monitoring; or
- d. Violation of conditions of the permit or permission to discharge, conditions of this article, or

any applicable state and federal regulations.

Noncompliant industrial users will be notified of the proposed termination of their wastewater permit and will be offered an opportunity to show cause under why the proposed action should not be taken.

(Ord. No. 13523, 12-17-2007)

#### **Sec. 70-342. Appeals and hearings.**

(a) *Appeal.* An applicant whose permit is denied, terminated, or granted subject to unacceptable conditions, and a user assessed a civil penalty or in receipt of an administrative order under the authority of this article shall have the right to an adjudicatory hearing. The applicant or user must submit a written request, identifying the specific issues to be contested, to the director within 30 days following receipt of the industrial wastewater discharge permit, civil penalty assessment, or administrative or termination order. Unless such written request is made within the time specified herein, the action subject to appeal shall be final and binding and further appeal is barred. For modified permits, only the parts of the permit being modified are subject to appeal. The director shall negotiate with the appealing party prior to the hearing and attempt to resolve the contested issues prior to a hearing.

(b) *Effect of appeal on permits.*

(1) *New permits.* Upon appeal, including judicial review in the general courts of justice, of the terms or conditions of a newly issued permit, the terms and conditions of the entire permit are stayed and the permit is not in effect until either the conclusion of judicial review or until the parties reach a mutual resolution. The applicant for a permit does not have the right to discharge into the POTW during this period.

(2) *Renewed permits.* Upon appeal, including judicial review in the general courts of justice, of the terms or conditions of a renewed permit, the terms and conditions of the existing permit remain in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.

(3) *Terminated permits.* Upon appeal of terminated permit, no permit is in effect until either the conclusion of judicial review or until the parties reach a mutual resolution. The former permit holder does not have the right to discharge into the POTW during this period.

(c) *Hearing.* The director or his designee shall serve as hearing officer and shall conduct the adjudicatory hearing. The city and the appealing party shall have the right to examine and cross examine witnesses, to present written evidence and testimony of witnesses, and may compel the attendance of city employees. Reasonable time limits may be established for such hearing. A complete transcript shall be made of the hearing if requested and paid for by the appealing party prior to the hearing. If a complete transcript is not requested, a written summary of the evidence presented at the hearing shall be made by the city.

(d) *Decision.* The hearing officer shall issue a written decision, which shall include findings of fact and conclusions. The decision shall be sent to the appealing party by certified or registered mail or hand delivered to the party's place of business. The decision is final and binding unless appealed to superior court within 30 days of receipt of the decision.

(e) *Settlement.* The director shall have the authority to settle any case or controversy that has been decided in an adjudicatory hearing or that has been appealed to court, except for settlements involving payment of city funds, which may only be approved in accordance with procedures specified by the city council.

(f) *Judicial review.* A decision in an adjudicatory hearing is subject to review by the superior court by proceedings in the nature of certiorari. A petition for review must be filed with the clerk of superior court within 30 days after the receipt of the decision by the appealing party. A decision hand delivered to a person's place of business shall be deemed delivered on the date of hand delivery if within normal business hours, and on the subsequent date, if not within such hours. Noncompliance by the city with technical timelines of this article is not grounds for judicial review.

(Ord. No. 13523, 12-17-2007)

### **Sec. 70-343. Civil penalties.**

(a) Any user who is found to have failed to comply with any provision of this article, or the orders, rules, regulations and permits issued hereunder, may be **assessed a civil penalty** of up to \$25,000.00 per day per violation.

Penalties between \$10,000.00 and \$25,000.00 per day per violation may be assessed against a violator:

(1) For any class of violation, only if a civil penalty has been imposed against the violator with in the five years preceding the violation; or

(2) In the case of failure to file, submit, or make available, as the case may be, any documents, data, or reports required by this article, or the orders, rules, regulations and permits issued hereunder, only if the director determines that the violation was intentional and a civil penalty has been imposed against the violator within the five years preceding the violation.

(b) In determining the amount of the civil penalty, the director shall consider the following:

(1) The degree and extent of the harm to the natural resources, to the public health, or to public or private property resulting from the violation;

(2) The duration and gravity of the violation;

(3) The effect on ground or surface water quantity or quality or on air quality;

(4) The cost of rectifying the damage;

(5) The amount of money saved by noncompliance;

(6) Whether the violation was committed willfully or intentionally;

(7) The prior record of the violator in complying or failing to comply with the pretreatment program;

(8) The costs of enforcement to the city.

(c) Appeals of civil penalties may be made as provided above.

(Ord. No. 13523, 12-17-2007)

### **Sec. 70-344. Other available remedies.**

Remedies, in addition to those previously mentioned in this article, are available to the director who may use any single one or combination against a noncompliant user. Additional available remedies include, but are not limited to:

(1) *Criminal violations.* The district attorney for the applicable judicial district may, at the request of the city, prosecute noncompliant users who violate the provisions of G.S. 143-215.6B. [Note: Under North Carolina law, it is a crime to negligently violate any term, condition, or requirement of a pretreatment permit, or negligently fail to apply for a pretreatment permit, issued by local governments (G.S. 143-215.6B(f)), to knowingly and willfully violate any term, condition, or requirement of a pretreatment permit, or knowingly and willfully fail to apply for a pretreatment permit, issued by local governments (G.S. 143-215.6B(g)), to knowingly violate any term, condition, or requirement of a pretreatment permit issued by

local governments, or knowingly fail to apply for a pretreatment permit, knowing at the time that a person is placed in imminent danger of death or serious bodily injury, (G.S. 143-215.6B(h)), and to falsify information required under Article 21 of Chapter 143 of the General Statutes (G.S. 143-215.6B(i)).]

(2) *Injunctive relief.* Whenever a user is in violation of the provisions of this article or an order or permit issued hereunder, the director, through the city attorney, may petition the superior court of justice for the issuance of a restraining order or a preliminary and permanent injunction which restrains or compels the activities in question.

(3) *Water supply severance.* Whenever a user or industrial user is in violation of the provisions of this article or an order or permit issued hereunder, water service to such user may be severed and service will only recommence, at the user's expense, after it has satisfactorily demonstrated ability to comply.

(4) *Public nuisance.* Any violation of the prohibitions or effluent limitations of this article or of a permit or order issued hereunder, is hereby declared a public nuisance and shall be corrected or abated as directed by the director. Any person(s) creating a public nuisance shall be subject to the remedial provisions of City ordinance, state statutes, and/or common law.

(Ord. No. 13523, 12-17-2007)

#### **Sec. 70-345. Remedies nonexclusive.**

The remedies provided for in this article are not exclusive. The director may take any, all, or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the city's enforcement response plan. However, the director may take other action against any user when the circumstances warrant. Further, the director is empowered to take more than one enforcement action against any noncompliant user.

(Ord. No. 13523, 12-17-2007)

Secs. 70-346--70-365. Reserved.

### **DIVISION 9. ANNUAL PUBLICATION OF SIGNIFICANT NONCOMPLIANCE**

#### **Sec. 70-366. Publication.**

At least annually, the director shall publish in a newspaper of general circulation that provides meaningful public notice within the city's jurisdiction(s) a list of those industrial users which were found to be in significant noncompliance, also referred to as reportable noncompliance, in 15A NCAC 2H .0903(b)(10), with applicable pretreatment standards and requirements, during the previous 12 months.

(Ord. No. 13523, 12-17-2007)

Secs. 70-367--70-375. Reserved.

## **DIVISION 10. AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS**

### **Sec. 70-376. Upset.**

(a) An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of subsection (b) are met.

(b) An industrial user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

- (1) An upset occurred and the user can identify the cause(s) of the upset;
- (2) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and
- (3) The user has submitted the following information to the director within 24 hours of becoming aware of the upset [if this information is provided orally, a written submission must be provided within five days]:
  - a. A description of the indirect discharge and cause of noncompliance;
  - b. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
  - c. Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

(c) In any enforcement proceeding, the industrial user seeking to establish the occurrence of an upset shall have the burden of proof.

(d) Industrial users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.

(e) Industrial users shall control production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

(Ord. No. 13523, 12-17-2007)

### **Sec. 70-377. Prohibited discharge standards defense.**

An industrial user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in **subsection 70-216(a) or the specific prohibitions in subsections 70-216(b)(2), (3), and (5-7) and (9-23)** if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either:

- (1) A local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the pass through or interference; or
- (2) No local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the city was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.

(Ord. No. 13523, 12-17-2007)

### **Sec. 70-378. Bypass.**

(a) Bypass is prohibited, and the director may take an enforcement action against a user for a bypass, unless:

- (1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
- (2) There were no feasible alternatives to the bypass such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
- (3) The user submitted notice as required under subsection (b), if such was possible, and if such was impossible, notified the director immediately when such notification became reasonable, and, at a minimum as required under subsection (c).

(b) If a user knows in advance of the need for a bypass, it shall submit prior notice to the director at least ten days before the date of the bypass, if possible. The director may approve an anticipated bypass, after considering its adverse effects, if the director determines that it will meet the conditions listed in subsection (a) or if the director determines that bypass is essential for maintenance required for the efficient operation of the pretreatment unit and that the bypass will not likely result in violation of pretreatment standards or requirements.

(c) A user shall give oral notice to the director of an unanticipated bypass that exceeds applicable pretreatment standards within 24 hours from the time it becomes aware of the bypass. A written submission shall also be provided within five days of this time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

(Ord. No. 13523, 12-17-2007)

Secs. 70-379--70-410. Reserved.

## **DIVISION 11. SEVERABILITY**

### **Sec. 70-411. Severability.**

If any provision, paragraph, word, section or article of this article is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections, and chapters shall not be affected and shall continue in full force and effect.

(Ord. No. 13523, 12-17-2007)

Secs. 70-412--70-491. Reserved.

**DIVISION 12- CONFLICT**

All other ordinances and parts of other ordinances inconsistent or conflicting with any part of this ordinance are hereby repealed to the extent of such inconsistency or conflict.

**DIVISION 13 – EFFECTIVE DATE**

This ordinance shall be in full force and effect from and after its passage, approval and publication, as provided by law.